

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**REUBEN RAY ROWAN**

Claimant

VS.

**U.S.D. #501**

Self-Insured Respondent

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Docket No. **1,035,564**

**ORDER**

The self-insured respondent requests review of the September 6, 2007 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

**ISSUES**

The Administrative Law Judge (ALJ) found claimant tripped and fell while walking through the doorway separating one classroom area from another. The ALJ concluded that tripping and falling was not an every day occurrence and although whether the fall was associated with a neutral risk or associated with his employment was not clear, in either event the accident was compensable.

The respondent requests review of whether claimant's accidental injury arose out of and in the course of employment. Respondent argues that walking is a normal activity of day-to-day living and claimant's fall as a result of his misstep was not the result of any increased risk associated with his employment.

Claimant argues ALJ's Order should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Reuben Rowan taught electronics for two years for the respondent. His job duties included teaching AC/DC, solid-state, digital, telecommunications, programmable logic controllers and computer hardware. Lectures are done in the classroom and then hands-on training is performed in the lab area.

On March 14, 2007, claimant had an accident at Kaw Area Technical School at approximately 8 a.m. while he was coming through a doorway between the lab area and classroom when he misstepped and fell on his left knee. The claimant further explained:

Q. Now, Mr. Rowan, you testified earlier that you misstepped and then fell. What do you mean by misstepping?

A. Well, evidently the tip of the shoe either hit the floor or a rise in the floor. Within that room the concrete is wavy. They have linoleum, but - - it was either that or there is a section where there is some tile out. I didn't pay any attention though.

Q. Okay. You don't know what may have caused you to misstep?

A. No.

Q. But there - - are there defects in the floor?

MR. KARNs: Well, objection. It's irrelevant if he doesn't know.

JUDGE AVERY: Well, you can answer the question.

A. Yes, there are defects in the floor. It's wavy and there's a piece of tile broken out.<sup>1</sup>

The claimant agreed that he was not saying he tripped on the tile because at the time he did not pay attention to what it was that caused him to trip. Claimant testified:

Q. You didn't - - you're not telling this Court that you tripped because of a piece of tile or something, you don't know what caused you to trip; isn't that true?

A. Well, that is true at the time I didn't pay attention to what it was.<sup>2</sup>

Richard Hoffman, respondent's general director, noted claimant had reported that he had tripped going between the classroom and the lab area. Sandra Dinas, respondent's work comp administrator, testified that on August 21, 2007, she had viewed the area where claimant allegedly fell, and there were no cracks, defects or torn linoleum. She further testified that between the date of the fall in March and August 21, 2007, she was not aware there had been any repair work done at Kaw Area Technical School but she did not know if any had been done.

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<sup>1</sup> P.H. Trans. at 10-11.

<sup>2</sup> *Id.* at 11.

Although claimant did not specifically identify whether it was the wavy concrete floor or a missing tile, he nonetheless attributed his trip and fall to being caused by one or the other defect. As such, it is not an unexplained fall, nor a fall caused by a personal condition but rather a trip and fall caused by the increased risk at the work site, i.e., the wavy concrete floor or missing tile. The claimant has met his burden of proof to establish his accidental injury arose out of and in the course of his employment.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>3</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>4</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge Brad E. Avery dated September 6, 2007, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of November 2007.

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BOARD MEMBER

c: Timothy J. Pringle, Attorney for Claimant  
Larry G. Karns, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge

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<sup>3</sup> K.S.A. 44-534a.

<sup>4</sup> K.S.A. 2006 Supp. 44-555c(k).